

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

DAKOTA CLAY AHLGRIM,

Plaintiff,

vs.

No. CIV 14-0285 JB/KK

GERMAN FRANCO; WENDY PEREZ; GREGG MARCANTEL; JERRY ROARK; JAMES LOPEZ; DERREK WILLIAMS; KENNETH SMITH; MARCELINO ROMERO; and JACOB MCLEROY, individually and in their official capacities,

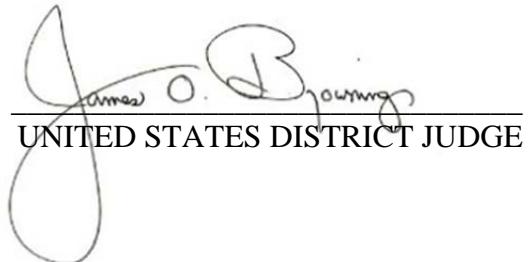
Defendants.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

THIS MATTER comes before the Court on Plaintiff Dakota Clay Ahlgrim's failure to comply with the Honorable Carmen E. Garza's and the Honorable Kirtan Khalsa's, United States Magistrate Judges for the District of New Mexico, orders or to make an initial partial payment towards the statutory filing fee. By the Order Granting Leave to Proceed Pursuant to 28 U.S.C. § 1915(b), and to Make Payments or Show Cause, filed April 22, 2014 (Doc. 6), Judge Garza directed Ahlgrim to make an initial partial payment towards the statutory filing fee. See 28 U.S.C. §§ 1914, 1915(b)(1). On May 1, 2014, Ahlgrim filed the Plaintiff's Response to Court's Order to Show Cause, filed May 1, 2014 (Doc. 7), asking to be excused from making payments. In the Memorandum Opinion and Order, filed October 29, 2014 (Doc. 12), Judge Khalsa denied Ahlgrim's request and required him to make the previously ordered initial payment. Ahlgrim has not made an initial payment or otherwise responded to the order.

The Court may not dismiss a complaint “for the reason that the prisoner has no assets.” 28 U.S.C. § 1915(b)(4). See Bell v. Whethel, No. 97-6126, 1997 WL 639319, at *1 (10th Cir. Oct. 14, 1997)(unpublished). On the other hand, “[i]f a prisoner has the means to pay, failure to pay the filing fee required by § 1915(b) may result in the dismissal of a prisoner’s civil action.” Cosby v. Meadors, 351 F.3d 1324, 1327 (10th Cir. 2003). Because Ahlgrim has not made the initial partial payment, or shown cause for excusing the failure, see Cosby v. Meadors, 351 F.3d at 1327; Baker v. Suthers, 9 F. App’x 947, 949 (10th Cir. 2001)(unpublished), the Court will dismiss his Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, filed March 25, 2014 (Doc. 1), and Complaint>Title 42 U.S.C. Section 1983 Civil Action, filed July 29, 2014 (Doc. 8).

IT IS ORDERED that Plaintiff Dakota Clay Ahlgrim’s Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, filed March 25, 2014 (Doc. 1), and Complaint>Title 42 U.S.C. Section 1983 Civil Action, filed July 29, 2014 (Doc. 8), are dismissed without prejudice, and judgment will be entered.



UNITED STATES DISTRICT JUDGE
James O. B. Cowman

Parties:

Dakota Clay Ahlgrim
Penitentiary of New Mexico
Santa Fe, New Mexico

Plaintiff pro se